IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1891 OF 2005
IN
FIRST APPEAL (ST.)NO.10282 OF 2005

The Municipal Corporation of Gr.Mumbai. ..Applicant.

V/s.

K.Kandaswamy & Anr. ..Respondents.

Mr.Xavier for applicant.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 12, 2006.

P.C. :

1. Heard counsel for the applicant. None appears for the respondent though served. Indeed, reply has been filed on behalf of the respondents to oppose this application. The respondents may be justified in contending that the application is vague and no sufficient cause has been made out. For the nature of pleadings in the application, even so in the interest of justice, in my opinion, application should be allowed but on condition that the applicant corporation to pay costs quantified at Rs.5,000/- to the respondents within three weeks from today.

2. If said amount is not paid in time, office to proceed on presumption that the application stands

dismissed for non-prosecution. The applicant to produce acknowledgement receipt towards payment received by the respondents in terms of order within specified time before the registry.

3. The amount of costs which is awarded will have to be borne by the person who is responsible for the lapse of non-filing of the present appeal in time. The department shall take appropriate action to identify the person who is responsible for delay and recover the costs of Rs.5,000/- from him as it is on account of his lapse and negligence the delay has occurred and costs will have to be paid which cannot be permitted to be utilised from the public exchequer.

4. The application allowed on the above terms. Office to register the first appeal and place the same for admission subject to above condition.

5. In case the applicant is unable to trace the respondents in time, it will be open for the applicant to deposit the same in the registry of this court within specified time, which amount will be made over the respondents after the appeal is over.